

New Monetary Penalty Amounts for Shipping Act Offences Released: November 3, 2007

In last month's Legal Desk we discussed the new "AMP" (Administrative Monetary Penalty) system currently being brought into effect under the *Canada Shipping Act 2001* ("*CSA 2001*"). I described how the AMP system was intended to encourage compliance with vessel safety and pollution requirements by allowing inspectors to issue violation tickets with maximum fines of up to \$50,000 per occurrence. Prior to the AMP system the inspector had to involve federal lawyers to prosecute violations in criminal court, which tended to be long, costly, and hence rare, occurrences. The AMP system is a dramatic evolution in our industry that every mariner should be familiar with because it significantly increases the likelihood that mariners will be held to account for violations of the *CSA 2001* and its regulations.

Shortly after the November *Legal Desk* was sent for publication the Minister of Transport released the draft AMP Regulation that will give effect to the general provisions of the AMP system contained in the *CSA 2001*. This draft regulation was released on November 3, 2007 and is intended to be finalized after a 60 day consultation period where the public is free to make their comments on the draft regulation.

The regulation itself is short and straight forward, the most important part of it being a lengthy list of specific sections of the *CSA 2001* that are subject to the AMP system and for which fines may be levied commencing 6 months after its expected implementation in the Spring of 2008.

Here is a sample from the menu of 76 violations that inspectors can fine mariners for, some more serious than others (most of the fines listed below are per occurrence, some however are per day the violation exists without being corrected):

Misleading Statements or Entries, Destruction of Logs (s.23): \$1,250 to \$25,000

No person shall:

- (a) wilfully destroy a document that is required under this Act to be kept;
- (b) make or cause to be made a false entry in a log book required under this Act to be kept with intent to mislead or wilfully omit to make an entry;

- (c) wilfully obstruct any inspector or other person or classification society or other organization that is exercising powers or performing duties under this Act;
- (d) knowingly provide false or misleading information or make a false or misleading statement, either orally or in writing, to a person, classification society or other organization that is exercising powers or performing duties under this Act.

Operating Vessel without Registry Certificate (s.63): \$250-\$5,000

No person shall operate a vessel in respect of which a certificate of registry or provisional certificate has been issued unless the certificate is on board.

Flying a Flag (s.64): \$250-\$1,000

The master of a Canadian vessel, other than one registered in the small vessel register, shall ensure that it flies the Canadian flag

- (a) when signalled to do so by a government vessel or a vessel under the command of the Canadian Forces; or
- (b) when entering or leaving, or while moored at or anchored in, a port.

Master Obligations for Crew (s.82): \$250-\$1,000 per day of violation

(1) The master of a Canadian vessel shall ensure that every person who is employed in a position on board presents to the master all Canadian maritime documents that they are required under this Part to have for that position.

(2) No master of a Canadian vessel shall operate it unless it is staffed with a crew that is sufficient and competent for the safe operation of the vessel on its intended voyage, and is kept so staffed during the voyage.

(3) No crew member shall wilfully obstruct a master's operation of a Canadian vessel unless the master is, without just cause, putting at risk the safety of the vessel or of any person on board.

Obligation to have Documents Aboard (s.107): \$1,250 - \$5,000

The master of a Canadian vessel shall, before the vessel embarks on a voyage from a port in Canada, ensure that all of the Canadian maritime documents required under this Part have been obtained.

Obligation of Master to Ensure Safety Aboard (s.109): \$1,250 - \$5,000

The master of a vessel shall take all reasonable steps to ensure the safety of the vessel and of persons who are on board or are loading or unloading it while using equipment on it.

Load Lines Submerged (s.110): \$1,250-\$25,000

The master of a vessel shall ensure that the applicable load lines on the vessel are not submerged.

Direction to Cease Due to Unsafe Conditions (s.111): \$1,250 - \$25,000

Every master shall comply with any direction given to the master by a marine safety inspector to cease any operation or procedure that, in the inspector's opinion, poses an undue risk because of unsafe conditions.

Duty to Report Navigational Hazards (s.112): \$1,250 - \$25,000

If the master of a Canadian vessel encounters dangerous ice, a dangerous derelict or other direct danger to navigation, a tropical storm, winds of a force of 10 or more on the Beaufort scale for which no storm warning has been received or subfreezing air temperatures associated with gale force winds and causing severe ice accretion on the superstructure of the vessel, the master shall give notice to all vessels in the vicinity and the prescribed authorities on shore of the danger.

Crew's Duty to Ensure Safety (s.113): \$1,250 - \$5,000

Every crew member on board a vessel shall

- (a) carry out their duties and functions in a manner that does not jeopardize the safety of the vessel or of any person on board;
- (b) report to the master any safety hazards of which they become aware;
- (c) report to the master any change in their circumstances that could affect their ability to carry out their duties and functions safely; and
- (d) comply with lawful directions given by the master.

Crew Duty to Comply with Safety Inspector (s.115): \$600-\$2,400

Every crew member on board a vessel shall comply with any direction given to them by a marine safety inspector to cease any operation or procedure that, in the inspector's opinion, poses an undue risk because of unsafe conditions.

Tampering (s.117): \$1,250 - \$25,000

No person shall tamper with or vandalize a vessel or its machinery, equipment or notices or plans relating to emergency procedures, safety or navigation.

Actions Jeopardizing Ship (s.118): \$1,250-\$25,000

No person shall take any action that might jeopardize the safety of a vessel or of persons on board.

Discharging Pollutants (s.187): \$1,250-\$25,000 per day

No person or vessel shall discharge a prescribed pollutant, except in accordance with the regulations made under this Part or a permit granted under Division 3 of Part 7 of the *Canadian Environmental Protection Act, 1999*.

Whistleblower Protection (s.218): \$1,250-\$25,000

No employer shall dismiss, suspend, demote, discipline, harass or otherwise disadvantage an employee, or deny an employee a benefit of employment, by reason that

- (a) the employee, acting in good faith and on the basis of reasonable belief, disclosed to the Minister that the employer or any other person had contravened or had intended to contravene a relevant provision;
- (b) the employee, acting in good faith and on the basis of reasonable belief, refused or stated an intention of refusing to do anything that is a contravention of a relevant provision;
- (c) the employee, acting in good faith and on the basis of reasonable belief, did or stated an intention of doing anything that is required to be done in order that a contravention of a relevant provision not be committed; or
- (d) the employer believes that the employee will do anything referred to in paragraph (a), (b) or (c).

The fines listed above are for each occurrence of a violation. A single event (such as the Queen of the North incident) can give rise to multiple, even dozens of fines for different violations that occur as a result of one event. These fines can be levied up to two years after the event occurred.

The list of 76 sections contained in this first set of regulation under the AMP system will be expanded in the coming months and years. While this initial list deals only with sections of the CSA 2001 itself (rather than sections of regulations under the CSA 2001) it is expected that additional regulations will be enacted that make violations of many of the shipping regulations subject to AMP fines as well. For example, the new Marine Personnel Regulations, the Machinery Regulations and the Oil Pollution Regulations will likely be brought into the AMP system in the near future.

Because of the significance of this new system, and features such as the public record of offences committed by crew, vessels and owners, that will be maintained by Transport Canada, I recommend mariners who have not read last months introduction to the AMP system do so.

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